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5 *Attorneys for Defendants*  
 6 LEARFIELD COMMUNICATIONS, LLC  
 and SIDEARM SPORTS, LLC

7 **UNITED STATES DISTRICT COURT**  
 8 **CENTRAL DISTRICT OF CALIFORNIA**

9 EMILY HEERDE and MARK  
 10 HAINES, individually and on behalf of  
 all others similarly situated,

11 Plaintiffs,

12 v.

13 LEARFIELD COMMUNICATIONS,  
 14 LLC, SIDEARM SPORTS, LLC, and  
 UNIVERSITY OF SOUTHERN  
 CALIFORNIA,

15 Defendants.  
 16

Case No.: 2:23-cv-04493-FLA-MAAx

**NOTICE OF MOTION AND  
 DEFENDANTS LEARFIELD  
 COMMUNICATIONS, LLC'S AND  
 SIDEARM SPORTS, LLC'S RULE  
 12(B)(6) AND 12(B)(7) MOTION TO  
 DISMISS PLAINTIFFS'  
 COMPLAINT**

*[Filed Concurrently with Memorandum  
 of Points and Authorities; Fed. R. Civ.  
 P. 5.1 Notice of Constitutional  
 Question; and (Proposed) Order]*

DATE: October 20, 2023  
 TIME: 1:30 p.m.  
 CTRM: 6B

Case Filed: 06/08/2023

22 **TO THE HONORABLE COURT, AND TO PLAINTIFFS, AND THEIR**  
 23 **COUNSEL OF RECORD HEREIN:**

24 **PLEASE TAKE NOTICE THAT** on October 20, 2023, at 1:30 p.m., or as  
 25 soon thereafter as counsel may be heard, in Courtroom 6B of the United States  
 26 District Court, Central District of California, Western Division, located at 350 W. 1<sup>st</sup>  
 27 Street, Los Angeles, California, 90012, Defendants Learfield Communications LLC  
 28

1 and Sidearm Sports, LLC (“Defendants”) will and hereby do move this Court for an  
2 order dismissing Plaintiffs’ Complaint with prejudice.

3 This Motion is made pursuant to Fed. R. Civ. P. 12(b)(6) for Plaintiffs’ failure  
4 to state a claim upon which relief may be granted. Specifically, Plaintiffs fail to allege  
5 essential elements of a claim under the Video Privacy Protection Act (“VPPA”), 18  
6 U.S.C. § 2710, including failing to allege that Defendants are “video tape service  
7 providers,” that Plaintiffs are “consumers” protected by the VPPA, that Defendants  
8 disclosed “personally identifiable information,” or did so knowingly. Further, the  
9 VPPA is an unconstitutional restraint on speech in violation of the First Amendment  
10 of the U.S. Constitution, both on its face and as applied to Defendants.

11 Plaintiffs further fail to state a claim for violation of California’s invasion of  
12 privacy act, Cal. Penal Code § 631 or 635, or common law invasion of privacy  
13 because Plaintiffs do not have a reasonable expectation of privacy in their web  
14 browsing data, amongst several other reasons. Plaintiffs also fail to state a claim for  
15 violation of the federal Wiretap Act, 18 U.S.C. § 2510 because Plaintiffs consented  
16 to the disclosure and the contents of the communications were not disclosed.

17 This Motion is further made pursuant to Fed. R. Civ. P. 12(b)(7) for failure to  
18 join USC, an indispensable party.

19 Defendants’ Motion is based on this Notice of Motion, the supporting  
20 Memorandum of Points and Authorities, the pleadings and papers on file in this  
21 action, and upon such further argument and evidence as may be presented prior to or  
22 at the hearing of this Motion. This Motion is made following the conference of  
23 counsel pursuant to L.R. 7-3 which took place on August 29, 2023.

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Respectfully submitted,

Dated: September 22, 2023

**BAKER & HOSTETLER LLP**

By: /s/ Teresa C. Chow  
TERESA C. CHOW

*Attorneys for Defendants*  
LEARFIELD COMMUNICATIONS, LLC  
AND SIDEARM SPORTS, LLC